

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Matthew Donald Parker.

Debtor.

C/A No. 06-01148-JW

Chapter 13

JUDGMENT

Based upon the Findings of Fact and Conclusions of Law made in the attached order, the Court shall extend the stay as to all creditors pursuant to 11 U.S.C. §362(c)(3)(B). Furthermore, the Court conditions the extension of the stay as follows: (1) should this case be dismissed for any reason, dismissal will be with prejudice to bar a re-filing by Matthew Donald Parker ("Debtor") for a period of one year as to Chapters 11, 12, and 13 of the Bankruptcy Code; (2) the automatic stay shall terminate on July 20, 2006, without further order, if Debtor does not have a plan confirmed in this case on or before July 13, 2006; and (3) the Chapter 13 Trustee shall condition confirmation of Debtor's plan on Debtor providing proof in the form of pay stubs or other records which indicate that Debtor has and can sustain sufficient income from his employment to fully fund his Chapter 13 plan during this case.

Columbia, South Carolina,
April 18, 2006


UNITED STATES BANKRUPTCY JUDGE

FILED
at O'clock & min. M
APR 18 2006
United States Bankruptcy Court
Columbia, South Carolina (6)

ENTERED
APR 18 2006
J.G.S.

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ORDER

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This matter comes before the Court upon a Motion to Extend the Automatic Stay ("Motion") filed by Matthew Donald Parker ("Debtor") pursuant to 11 U.S.C. §362(c)(3)(B).¹ The Motion and the Notice of Hearing were served on all creditors. The Chapter 13 Trustee filed a response to the Motion. Cynthia F. Simmons ("Creditor"), Debtor's ex-wife, also filed an objection to the Motion.

Mr. Parker was a debtor in a prior Chapter 13 bankruptcy case (C/A No. 05-07864) that was pending within a one (1) year period preceding the filing of this current case. Therefore, pursuant to § 362(c)(3)(A), the automatic stay provided by § 362(a) is scheduled to terminate on April 23, 2006, the thirtieth day (30th) day after Debtor filed this current bankruptcy case.

Under § 362(c)(3)(C)(i)(II)(cc), there is a presumption that Debtor did not file this current case in good faith because Debtor's previous case was dismissed for failure to make timely plan payments. Pursuant to § 362(c)(3)(C)(ii), the lack of good faith presumption also arises with respect to Green Tree Servicing LLC, a secured creditor with a lien on Debtor's mobile home, because Debtor entered into a settlement agreement that resolved Green Tree Servicing, LLC's motion for relief from stay prior to the dismissal of Debtor's previous case. Furthermore, because General Motors Acceptance

¹ Internal references to the Bankruptcy Code (11 U.S.C. § 101 et. seq.), as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, shall be made by section number only.

Corporation ("GMAC") obtained relief from stay prior to the dismissal of Debtor's previous case, the presumption of a lack of good faith also arises with respect to GMAC, a secured creditor that held a lien on a motor vehicle in Debtor's possession during the prior case. Therefore, in light of the presumption that Debtor filed this current case with a lack of good faith, Debtor must demonstrate, by clear and convincing evidence, that he filed this case in good faith in order to extend the stay beyond April 23, 2006.

Debtor filed his previous case in July 2005. During the prior case, Debtor changed jobs. Debtor explained that he left a lawn care business that had been sold to another entity, and found employment as a contractor installing custom floors. Debtor worked for an individual that installed and refurbished floors on behalf of Rainbow Custom Floorings ("RCF"). However, the individual that provided Debtor with employment left RCF unannounced, and did not pay Debtor for certain work he had performed. Given the loss of income, Debtor was unable to make his plan payments in a timely manner, and he was unable to become current on the payments. Therefore, Debtor's previous case was dismissed on January 12, 2006.

Prior to the dismissal of the prior case, Debtor began working directly for RCF as an independent contractor during November 2005. During the prior case, Debtor earned \$3,000.00 while working directly for RCF. Currently, RCF is servicing a contract with the United States Military. Under the terms of the contract, RCF refurbishes flooring for certain homes on a military base located in Beaufort, South Carolina. Debtor asserts that under RCF's contract, there are 1700 homes that need refurbished floors, and that only 150 of the 1700 homes have been completed at this time. Furthermore, according to Debtor, RCF's contract is scheduled to run for a five year term. Although Debtor

describes the details of the RCF contract, Debtor provided no documentation indicating that RCF was obligated to retain Debtor and use him for the full term of the contract in order to demonstrate the stability of his working relationship with RCF.

According to Debtor's testimony, RCF provides Debtor with a list of approximately 50 homes to service. Debtor testified that he finishes refurbishing or installing floors for 10 to fifteen 15 homes per week and that he is paid for each home he completes. Under his current pace, Debtor currently earns approximately \$3,700.00 per month.² However, in light of his status as an independent contractor, Debtor is required to pay his employment taxes and required withholdings rather than have RCF withhold funds from his pay. Debtor estimates that his tax obligation is approximately \$750.00 per month. Debtor's schedule J indicates that Debtor incurs \$3,317.00 in household expenses which include a \$750.00 expense for monthly taxes associated with his work for RCF. After subtracting Debtor's monthly expenses of \$3,317.00 from his monthly income of \$3,700.00, Debtor has \$383.00 remaining for his proposed monthly plan payments of \$275.00.

Creditor raised an objection to Debtor's Motion. Creditor contends that despite the increase in Debtor's income from \$3,000.00 during prior case to \$3,700.00 in this case, Debtor has not demonstrated, by clear and convincing evidence, a substantial change in financial or personal circumstances since the dismissal of the prior case or any other reason to find that Debtor's case will be concluded with a confirmed plan that is fully performed. Furthermore, Creditor contends that Debtor filed this Chapter 13 case for the sole purpose of frustrating her efforts to enforce a Rule to Show Cause issued by a

² Debtor contends that the \$3,700.00 in monthly income is the income remaining after subtracting monthly business expenses from his gross monthly earnings.

South Carolina Family Court ("Family Court") in response to Debtor's failure to fulfill certain obligations arising from a divorce decree. Apparently, Debtor filed this current case shortly after his prior case was dismissed, but before a scheduled hearing for the Rule to Show Cause in Family Court.

Creditor also contends that in light of a document submitted by Debtor into evidence, Debtor cannot afford to service his monthly plan payments. Creditor points to Debtor's monthly tax payments of \$750.00 and a \$300.00 increase in Debtor's transportation costs as additional expenses that would make Debtor unable to make his monthly plan payments. Upon review of Debtor's schedule J, Debtor includes his \$750.00 monthly taxes as a household expense, and appears to have sufficient monthly disposable income to fund his plan after all monthly expenses are subtracted from monthly income. During the hearing on the Motion, Debtor also indicated that the \$3,700.00 listed on his schedules is net of business expenses which include all transportation and fuel expenses associated with his work. Debtor's Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income ("CMI") indicates that Debtor earns \$3,691.77 in business income after \$1,400.00 in business expenses are subtracted from Debtor's \$5,091.77 in gross receipts. Debtor also asserted that other household expenses may be decreased in order to compensate for any increase in his transportation costs.

Creditor also raised concerns as to the decrease in Debtor's plan payments from \$450.00 during the prior case to \$275.00 in this case. In response, Debtor explained that he pays less for his plan in this case because he expects to incur additional household costs associated with \$377.00 of health insurance premiums that are listed on Debtor's

schedule J. Thus, given the financial issues raised by Creditor and Debtor's financial affairs as described in his schedules, it appears that Creditor's objection should be overruled.

Creditor indicated that she may file a substantial claim against Debtor's bankruptcy estate. The Chapter 13 Trustee notes that in Debtor's previous case, Creditor filed a claim for \$88,000.00 of which \$50,000.00 represented a priority claim and \$38,000 represented an unsecured claim. Apparently, Creditor's claim is the product of Debtor's failure to pay certain joint debts and disburse certain proceeds from the sale of a home.³ Given the size of Creditor's claim, the Chapter 13 Trustee voiced concerns with the feasibility of Debtor's plan if Creditor files her \$88,000.00 claim and the full amount of the claim is allowed. Thus, it appears that Creditor's concerns with the feasibility of Debtor's plan can be better addressed at confirmation. The Court also notes that Creditor may seek other remedies, such as objecting to Debtor's plan or seeking relief from stay, to pursue her claim against Debtor. Based upon the totality of the circumstances, Debtor has demonstrated that this case was filed in good faith by clear and convincing.⁴ Accordingly, the Court shall extend the stay as to all creditors pursuant to section 362(c)(3)(B).

Despite this initial finding of good faith, the Court is concerned about the issues raised by Creditor's objection and the potential that Debtor may not be able to sustain his income through the life of this case in light of the fact that Debtor did not provide a

³ Debtor contends that he was unable to provide certain funds to Creditor upon the sale of a home because Debtor was unable to sell the home for the price he established for the sale.

⁴ The Court's findings are limited to the context of this Motion and nothing in this Order shall be construed as *res judicata* to prevent Debtor, the trustee, or any party in interest from challenging or establishing that this case or plan was filed or proposed in good faith for purposes of 11 U.S.C. §§ 1307 or 1325. See *In re Charles*, 332 B.R. 538, 542 (Bankr. S.D. Tex. 2005) (holding that Congress, by enacting § 362(c)(3), intended the courts to conduct an early triage of a case and determine whether a case is doomed to fail or whether a case has a reasonable likelihood of success).

written agreement describing the duration of his employment term with RFC. Therefore, given Creditor's objection to the Motion and the concerns of the Chapter 13 Trustee, the Court conditions the extension of the stay as follows: (1) should this case be dismissed for any reason, dismissal will be with prejudice to bar a re-filing by Debtor for a period of one year as to Chapters 11, 12, and 13 of the Bankruptcy Code; (2) the automatic stay shall terminate on July 20, 2006, without further order, if Debtor does not have a plan confirmed in this case on or before July 13, 2006; and (3) the Chapter 13 Trustee shall condition confirmation of Debtor's plan on Debtor providing proof in the form of pay stubs or other records which indicate that Debtor has and can sustain sufficient income from his employment to fully fund his Chapter 13 plan during this case.

AND IT IS SO ORDERED.

Columbia, South Carolina,
April 18, 2006


UNITED STATES BANKRUPTCY JUDGE